Hovsepian v. Apple, Inc. Doc. 75

HENNIGAN, BENNETT & DORMAN LLP
RODERICK G. DORMAN (SBN 96908)
ALAN P. BLOCK (SBN 143783)
KEVIN SHENKMAN (SBN 223315)
601 South Figueroa Street, Suite 3300
Los Angeles, California 90017
Phone: (213) 694-1200
Fax: (213) 694-1234
dormanr@hbdlawyers.com
blocka@hbdlawyers.com
shenkmank@hbdlawyers.com

Attorneys for Plaintiff
ACACIA MEDIA TECHNOLOGIES CORPORATION

UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

In re ACACIA MEDIA TECHNOLOGIES CORPORATION	Case No. 05 CV 01114 JW MDL No. 1665 **PLAINTIFF ACACIA MEDIA TECHNOLOGIES CORPORATION'S OPPOSITION TO DEFENDANT DIRECTV GROUP, INC.'S MOTION FOR RECONSIDERATION OF THE COURT'S CONSTRUCTION OF THE TERM "TRANSCEIVER"** **DATE:** September 8-9, 2005 **TIME:** 9:00 a.m. **CTRM:** Hon. James Ware

Dockets.Justia.com

TABLE OF CONTENTS

(Page)

I. INTRODUCTION 1

II. THE COURT'S CONSTRUCTION OF "TRANSCEIVER" IS CORRECT 2

- A. The Court's Construction of the Term "Transceiver" 2
- B. The Court's Construction of Transceiver is Legally Correct 3

III. THE INTRINSIC PATENT DOCUMENTS DO NOT SUPPORT DIRECTV'S CONSTRUCTION OF "TRANSCEIVER" 5

- A. The Claims of the '702 Patent Do Not Support DIRECTV's Construction 5
- B. The Meaning of Transceiver Proposed by DIRECTV's Expert is at Odds with the Meaning of Transceiver as Taught in the Specification and Therefore the Expert Testimony Should Be Ignored 6
  - 1. DIRECTV's Contention that the Specification of the '720 Patent Describes a System in Which Transceivers Only Utilize a Single Communication Medium is Incorrect 11
- C. The Dictionary Definitions Do Not Support DIRECTV's Construction 13
  - 1. DIRECTV's Expert Testimony Is Less Reliable than the Dictionaries Themselves 15
- D. The Court's Construction of "Transceiver" Is not Overly Broad 18

IV. CONCLUSION 20

TABLE OF AUTHORITIES

(Page)

Cases

Anchor Wall Systems, Inc. v. Rockwood Retaining Walls, Inc.,
340 F.3d 1298 (Fed. Cir. 2003) 12

Bell & Howell Document Mgmt. Prods. Co. v. Altek Sys.,
132 F.3d 701 (Fed. Cir. 1997) 11

Hockerson-Halberstadt, Inc. v. Converse, Inc.,
183 F.3d 1369 (Fed. Cir. 1999) 6

Inline Connection Corp. v. AOL Time Warner, Inc.,
302 F. Supp. 2d 307 (D. Del. 2004) 2, 14

Key Pharms. v. Hercon Labs. Corp.,
161 F.3d 709 (Fed. Cir. 1998) 10

Liebscher v. Boothroyd,
258 F.2d 948 (C.C.P.A. 1958) 16

Markman v. Westview Instruments, Inc.,
52 F.3d 967 (Fed. Cir. 1995) (*en banc*), *aff'd*, 517 U.S. 370, 134 L. Ed. 2d 577, 116 S.Ct. 1384 (1996) 10

Personalized Media Communications, LLC v. International Trade Commission,
161 F.3d 696 (Fed. Cir. 1998) 11

Phillips v. AWH Corp.,
__ F.3d __, 2005 U.S. App. LEXIS 13954 (Fed. Cir. 2005) .... passim

Vitronics Corp. v. Conceptronic, Inc.,
90 F.3d 1576 .... 3, 10, 15, 16

I. INTRODUCTION

Plaintiff Acacia Media Technologies Corporation ("Acacia") hereby opposes defendant DIRECTV Group, Inc.'s ("DIRECTV's") motion for reconsideration of the court's construction of the term "transceiver."

There is no legal basis for modifying the Court's construction of "transceiver" as "a singular device capable of both sending and receiving information." The term "transceiver," as used in the claims and as described and depicted in the '702 patent specification, is a component of the reception system and is in data communication with the transmission system. The Court properly consulted the '702 patent specification to learn about the "transceiver" and consulted a dictionary to understand the meaning of "transceiver." The Court did not presume that the term should be construed consistent with its dictionary definition and the Court did not adopt the dictionary definition that it considered. No party presented expert testimony, and the Court did not request or require any expert testimony. Based on the intrinsic patent information and consistent with the recent *Phillips v. AWH Corp.* case, the Court properly construed the term "transceiver." No reconsideration of the Court's construction of "transceiver" is therefore necessary or proper.

DIRECTV now contends that the meaning of "transceiver" to a person of ordinary skill in the art is "a singular device that interfaces with a single communication medium and that is capable of sending and receiving data over that communication medium." DIRECTV's contention is inconsistent with parties' positions during the initial Markman proceedings as to the meaning of the term "transceiver" to one of ordinary skill in the art. Relying on the same patent specification and on the same dictionary definitions of "transceiver" as DIRECTV does now, no party or the Court previously believed that one of ordinary skill in the art would understand the term "transceiver" to include the additional limitation (being proposed by DIRECTV) of interfacing with and communicating over only a single communication medium.

DIRECTV's proposed construction for "transceiver" is inconsistent with the patent claims and with the patent specification. Nothing in the claims or the specification of the '702 patent limits the communication system to a single communication medium or limits the transceiver of the reception system to sending and receiving information over a single communication medium. In fact, the specification explicitly describes and illustrates an embodiment wherein the communication system operates on *two* communication media (e.g., a satellite broadcast transmission and a telephone line) and this embodiment is covered by the claims of the ‘720 patent. (*See,* ‘702 patent, at 16:34-45; Figure 2b; Exhibit 1[1]). DIRECTV’s expert testimony contradicts these facts and therefore it should be ignored.

It would therefore be improper for the Court to modify its construction of transceiver, as requested by DIRECTV. The Court should thus deny DIRECTV’s motion for reconsideration.

II. THE COURT’S CONSTRUCTION OF “TRANSCEIVER” IS CORRECT

A. The Court’s Construction of the Term “Transceiver”

In its Markman Order, the Court was capable of construing the term “transceiver,” based on the intrinsic patent documents and the dictionary definitions presented by the parties, as “a singular device capable of both sending and receiving information.” (Markman Order, at 36:19-20; Exhibit 2). The Court did not indicate that there was any ambiguity in the meaning of the term “transceiver” which would require the Court to consult expert extrinsic evidence.

The Court found that, although the parties’ did not dispute that a transceiver is “a device capable of both transmitting and receiving information,” the parties did dispute whether a transceiver must share circuit components for both the transmitting and receiving functions. (Markman Order, at 36:4-6; Exhibit 2). The Court quoted the definition for “transceiver” from the *Dictionary of Computing*: “Acronym for transmitter and receiver. A device that can both transmit and receive signals on a communication medium. Many communication devices, including *modems, *codecs, and terminals, are transceivers.”[2] (Dictionary of Computing, 3rd Ed. 1990, p. 474; Exhibit 6).

The Court also consulted the specification of the ‘702 patent:

---

[1] All exhibits referred to herein are attached to the accompanying Declaration of Alan P. Block filed in support of Acacia’s Opposition to defendants’ motion re “transceiver.”

[2] This is the same definition for “transceiver” which the Court in the *Inline Connection* case relied on when determining that the ordinary meaning of “transceiver” is a “a device capable of both sending and receiving information.” *See, Inline Connection Corp. v. AOL Time Warner, Inc*., 302 F. Supp. 2d 307, 325 n 79 (D. Del. 2004).

> In the specification, the description of a transceiver is at a block level that does not elaborate on the workings of the transceiver, much less its circuitry. The specification does illustrate the transceiver as a single box on figures 2b and 6 of the '702 patent.

(Markman Order, at 36:16-18; Exhibit 2).

Thus, the Court construed the term "transceiver" as "a singular device capable of both sending and receiving information." (Markman Order, at 36:4-6; Exhibit 2). The Court did not adopt verbatim any dictionary definition and did not adopt verbatim either of the parties' proposed constructions.

B. The Court's Construction of Transceiver is Legally Correct

The words of a claim are generally given their ordinary meaning to a person of ordinary skill in the art at the time of the invention. *Phillips v. AWH Corp.*, __ F.3d __, 2005 U.S. App. LEXIS 13954, at *22 (Fed. Cir. 2005). "The person of ordinary skill in the art is deemed to read the claim term not only in the context of the particular claim in which the disputed term appears, but in the context of the entire patent, including the specification." *Id.* at *24.

Following *Phillips*, courts are permitted to consult dictionaries to assist in understanding the commonly understood meaning of words and may rely on dictionary definitions, "so long as the dictionary definition does not contradict any definition found in or ascertained by a reading of the patent documents." *Id.* at *54, *quoting*, *Vitronics Corp. v. Conceptronic, Inc.*, 90 F.3d 1576, 1585, n 6.[3]

---

[3] In *Phillips*, the *en banc* panel of the Federal Circuit held that there is no rigid algorithm to be used by a court when construing a claim:

> [W]e recognized [in *Vitronics*] that there is no magic formula or catechism for conducting claim construction. Nor is the court barred from considering any particular sources or required to analyze sources in any specific sequence, as long as those sources are not used to contradict claim meaning that is unambiguous in light of the intrinsic evidence. [citations omitted]. For example, a judge who encounters a claim term while reading a patent might consult a general purpose or specialized dictionary to begin to understand the meaning of the term, before reviewing the remainder of the patent to determine how the patentee has used the term. The sequence of steps used by the judge in consulting various sources is not important; what matters is for the court to attach the appropriate weight to be assigned to those sources in light of the statutes and policies that inform patent law. *Vitronics*, 90 F.3d at 1582. In *Vitronics*, we did not

DIRECTV contends in its Motion that the Court followed *Texas Digital's* "dictionary first" claim process, which resulted in a construction that is "too broad and out of context with the specification." (Motion, at 5:23-25). DIRECTV does not explain what the "dictionary first" claim process[4] is or how the Court followed this process in reaching its construction.

The Court did not follow *Texas Digital's* claim construction process. According to the Federal Circuit in *Phillips*, *Texas Digital* permitted a court to determine the ordinary meaning of a term from a dictionary and consult the specification to determine whether the specification excludes one of the meanings derived from the dictionary and therefore to determine whether the presumption in favor of the dictionary definition has been overcome. *Phillips*, __ F.3d at __, 2005 U.S. App. LEXIS 13954, at *46 ("In effect, the *Texas Digital* approach limits the role of the specification in claim construction to serving as a check on the dictionary meaning of a claim term if the specification requires the court to conclude that fewer than all the dictionary definitions apply, or if the specification contains a sufficiently specific alternative definition or disavowal.")

In this case, the Court did not presume that the term "transceiver" was to be construed in accordance with a dictionary definition and did not consult the specification solely to determine whether this presumption had been overcome. The Court started by comparing the parties' proposed constructions and determined from those constructions that the parties agreed that a "transceiver" is "a device capable of both sending and receiving information" and that the parties disagreed as to whether the device must share circuit components. The Court consulted a dictionary to confirm that the dictionary meaning of "transceiver" was consistent with the use of that term in the '702 patent

---

> attempt to provide a rigid algorithm for claim construction, but simply attempted to explain why, in general, certain types of evidence are more valuable than others. Today, we adhere to that approach and reaffirm the approach to claim construction outlined in that case, in *Markman*, and in *Innova*.

Phillips, ___ F.3d at ___, 2005 U.S. App. LEXIS 13954, at *57-59.

[4] DIRECTV's use of the phrase "dictionary first" appears to infer that, following *Phillips*, a court is no longer able to consult the dictionary first. The Federal Circuit in *Phillips* held that it would be proper for a court to consult the dictionary first before consulting the specification: "For example, a judge who encounters a claim term while reading a patent might consult a general purpose or specialized dictionary to begin to understand the meaning of the term, before reviewing the remainder of the patent to determine how the patentee used the term." *Phillips*, __ F.3d at __, 2005 U.S. App. LEXIS 13954, at *58.

specification. The Court did not presume that the term "transceiver" had the dictionary definition meaning. Under *Phillips*, this is the proper use of a dictionary. *Phillips*, __ F.3d at __, 2005 U.S. App. LEXIS 13954, at *58. After consulting all of these sources, the Court construed the term transceiver, taking into account the patentees' use of the term "transceiver" in the specification.[5]

The Court's construction is therefore proper and no reconsideration or modification to the Court's construction is necessary or warranted.

III. THE INTRINSIC PATENT DOCUMENTS DO NOT SUPPORT DIRECTV'S CONSTRUCTION OF "TRANSCEIVER"

A. The Claims of the '702 Patent Do Not Support DIRECTV's Construction

The term "transceiver" is found in claims 1, 17, and 27 of U.S. Patent No. 6,144,702 (the '702 patent; Exhibit 1) in the phrase "a transceiver in data communication with said transmission system."

Claims 1, 17, and 27 are system claims which are directed to a communication system comprising both a transmission system and a reception system. Each of these claims use the open-ended transition term "comprising."

The transceiver is one of the components identified in the claims as being part of the reception system. The only requirements of the claims are that the transceiver of the reception system be in data communication with the transmission system and that the storage device of the reception system be in data communication with the transceiver. Although the claims identify some of the components of the transmission system, the claims do not specify which of the components of the transmission system the transceiver is in data communication with for either transmitting or receiving.

Claims 1, 17, and 27 do not specify other aspects of the claimed communication system related to the transceiver of the reception system. The claims do not specify what information would be received by the transceiver of the reception system. The claims do not specify what information would be transmitted by the transceiver of the reception system. The claims do not specify any type of communication medium to be used by the transceiver for transmitting and/or receiving information.[6] Thus, the context in which the term "transceiver" is used in the claims implies that there is no limitation on the type or number of communication media to be used by the transceiver. *See*, *Phillips*, __ F.3d at __, 2005 U.S. App. LEXIS 13954, at *27 ("To begin with, the context in which a term is used in the asserted claim can be highly instructive."); *Hockerson-Halberstadt, Inc. v. Converse, Inc.*, 183 F.3d 1369, 1374 (Fed. Cir. 1999) ("[p]roper claim construction . . . demands interpretation of the entire claim in context, not a single element in isolation.")

---

[5] The fact that the Court took into account the patentees' use of "transceiver" in the specification is supported by the Court's use of the term "singular" in its construction. It appears that the Court relied on the fact that the specification illustrates the transceiver as a single box, when it defined transceiver as a "singular" device capable of both sending and receiving information. (*See*, Markman Order, at 36:17-18; Exhibit 2).

None of the claims of the '702 patent specifies that the transceiver is a device which only interfaces with a single communication medium and is only capable of sending and receiving data over that single communication medium.

B. The Meaning of Transceiver Proposed by DIRECTV's Expert is at Odds with the Meaning of Transceiver as Taught in the Specification and Therefore the Expert Testimony Should Be Ignored

The '702 patent specification makes clear that the functions of a transceiver are not limited to single communication medium. Both the text and the figures of the specification make this clear.

The transceiver of the reception system is identified in the '702 patent specification by reference number 201. The specification states that the transceiver of the reception system *receives* information sent from the transmission system:

---

[6] Additional information regarding the transceiver is contained in some of the dependent claims of the '702 patent. For instance, dependent claims 8 and 34 state that the transmission system further includes a transmitter and specifies that the transmitter sends at least a portion of a data file to the reception system. Dependent claims 11 and 37 state that the reception system further includes a receiver format converter and specifies that the receiver format converter converts at least a portion of a data file. Dependent claims 13, 15, 22, 23, 39, and 40 specify that the storage device of the reception system stores at least a portion of a data file. Dependent claims 24 and 25 specify that the transceiver both transmits a user request for at least a portion of a data file and receives the portion of the data file.

> The reception system 200 includes transceiver 201 which receives the audio and/or video information transmitted by transmitter 122 of the transmission system 100. The transceiver 201 automatically receives the information from the transmitter 122 as compressed formatted data blocks.

(‘702 patent, 17:22-27; Exhibit 1).

The specification also states that the transceiver *transmits* information – user requests (‘702 patent, 13:16-27 and 14:28-51; Exhibit 1) and confirmation of the receipt of the transmitted information (‘702 patent, 16:24-45; Exhibit 1) – to the transmission system.[7]

The patent specification describes multiple types of communication channels over which transmissions may be made, i.e., standard telephone, ISDN, broadband ISDN, microwave, DBS (direct broadcast satellite), cable television systems, MAN (metropolitan area networks), LAN (local area networks), high speed modems, VHF, and UHF. (*See*, ’702 patent, 4:51-61; 15:30-40; 16:9-22; Figures 1g and 2b; Exhibit 1).

In cases where the communication system operates using a broadcast-type transmission (e.g., a satellite broadcast), the patent specification teaches that the transceiver of the reception system operates using *two* communication channels – broadcast satellite for receiving information from the transmission system and telephone for transmitting information to the transmission system:

> When item distribution occurs through a broadcasting method such as a communications *satellite*, the process is one way, with ongoing reception not being confirmed by the reception system 200. In these situations, some further redundancy is included by transmission formatter 122 with the data

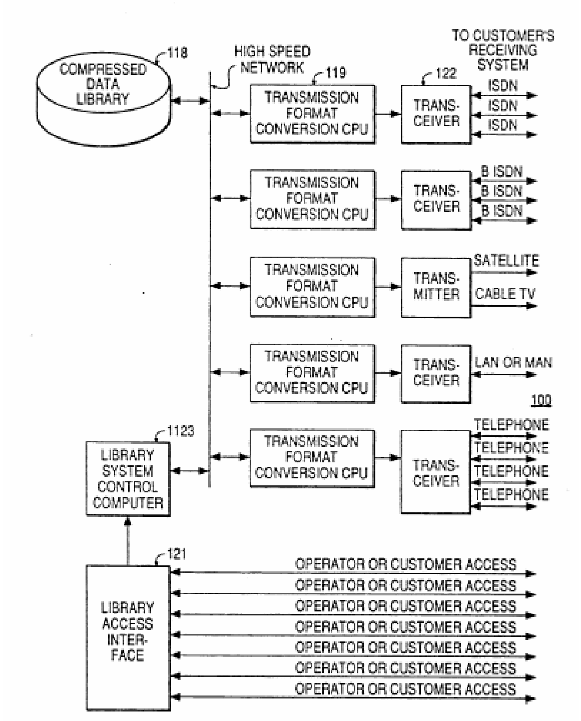
---

[7] The transceiver is the only component of the reception system that is capable of transmitting information to the transmission system. Previously, the adult entertainment defendants contended that the transmission of user requests from the reception system could be made by the user/computer interface, because there is an arrow drawn in Figure 6 pointing away from the user/computer interface 207 with the words “to audio & transmission system.” (*See*, Figure 6 of the ‘702 patent; Exhibit 1). The patent specification does not state that the “user/computer interface” is the device which transmits information to the transmission system, nor could it. (*See*, ‘702 patent, 14:28-51; Exhibit 1). An interface is merely a boundary or connection, which, according to its name – the user/computer interface – is a boundary or connection between the user and the computer (the reception system). An interface is incapable of transmitting information and would be incapable of transmitting information to the transmission system. The device depicted in Figure which is capable of transmitting information to the transmission system is the transceiver.

blocks for error correction processing to be performed in the reception system 200. In such one way communication situations, the queue manager program running in library system control computer 1123 confirms reception, via *telephone line* connection for example, to the reception system 200 after distribution. This should occur prior to updating the user's account and the dispatch lists.[8]

('702 patent, at 16:34-45; emphasis added; Exhibit 1).

Figure 2b of the '702 patent illustrates the *two* communication channel embodiment of the invention:



COMPRESSED DATA LIBRARY
118
HIGH SPEED NETWORK
119
TRANSMISSION FORMAT CONVERSION CPU
122
TRANS-CEIVER
TO CUSTOMER'S RECEIVING SYSTEM
ISDN
B ISDN
TRANS-MITTER
SATELLITE
CABLE TV
LAN OR MAN
100
TELEPHONE
1123
LIBRARY SYSTEM CONTROL COMPUTER
121
LIBRARY ACCESS INTER-FACE
OPERATOR OR CUSTOMER ACCESS

FIG. 2b

---

[8] This portion of the '702 patent actually describes how a satellite television system transmits programming to the reception system and how the reception system sends to the transmission system confirmation of receipt of the program so that the transmission system can update the user's account (e.g., confirming user's purchase of a pay-per-view movie). This is how defendants DIRECTV's and EchoStar's systems operate. The purpose of DIRECTV's motion therefore appears to be an effort by these parties to avoid infringement by excluding this embodiment from the claims of the '702 patent through claim construction.

Figure 2b illustrates the portion of the transmission system which stores the compressed data files and which formats and transmits the files to the reception system. Reference numeral 122 shows the transceivers and transmitters used by the transmission system to transmit the files over the various communication media. A *transmitter* is shown as transmitting files using either a satellite or a cable communication medium. Being a transmitter (not a transceiver), the transmitter is only capable of *transmitting* information over a communication medium.

A transmitter, however, cannot receive information (there is only a single-headed arrow, pointing from the transmitter). The transmission system therefore requires some other means for receiving information from the reception system so that the transmission system can confirm that the user received the transmitted information and so that the user's account can be updated and the user charged for receiving the file. Thus, at the bottom of Figure 2b there is a double-headed arrow which is labeled as the "operator or customer access" and which is connected to the "library access interface 121." The "operator or customer access" operates using a *different* communication medium for receiving confirmation information from the customer's reception system (described in the patent specification as being, for example, a telephone line, '702 patent, 16:34-45; Exhibit 1).

This embodiment of the invention which uses *two* communication media is *covered* by claims 1, 17, and 27 of the '702 patent. The claims do not specify either a transmitter or a transceiver as a component of the transmission system, and thus either a transmitter or a transceiver (or both) could be included as a component of the transmission system. Further, the claim does not specify any type of communication media to be used or that only one communication media must be used, and thus any one or more of the media described in the specification could be used, including cable, satellite, broadcast television, or telephone. Lastly, the claim describes the transceiver of the reception system as being in data communication with the *transmission system*, and thus the transceiver could be in data communication with any component of the transmission system, including a transmitter for receiving information from the transmission system and a customer access input to the transmission system for transmitting information to the transmission system.

The Federal Circuit recently reiterated that "a court should discount any expert testimony 'that is clearly at odds with the claim construction mandated by the claims themselves, the written description, and the prosecution history, in other words, with the written record of the patent.'" *Phillips*, __ F.3d at __, 2005 U.S. App. LEXIS at 13954, at *39, *quoting*, *Key Pharms. v. Hercon Labs. Corp.*, 161 F.3d 709, 716 (Fed. Cir. 1998).

In other words, once the meaning of the transceiver was determined by reference to the intrinsic patent documents (i.e., the claims and the specification), the Court cannot rely on extrinsic expert testimony. This was the holding in *Vitronics*. In *Vitronics*, the district court found that the claim term "solder reflow temperature" should be construed as 183°C (the liquidus temperature of a particular type of solder). *Vitronics*, 90 F.3d at 1581. In reaching this decision, the district court considered not only the intrinsic patent documents, but also the defendant's expert testimony and other extrinsic evidence. *Id.* The Federal Circuit, however, found that the meaning of the term "solder reflow temperature" could be ascertained from the patent claim and specification as "peak reflow temperature." *Id.* at 1583. The Federal Circuit held that the district court erred by giving weight to the extrinsic evidence. Once the meaning of "solder flow temperature" became clear from the specification, the court should not have considered any extrinsic evidence, or, if it had considered the evidence, the court should not have given it any weight:

> Since the claim, read in light of the patent specification, clearly uses the term "solder reflow temperature" to mean peak reflow temperature, rather than the liquidus temperature, that should have been the end of the trial court's analysis. Only if there were still some genuine ambiguity in the claims, after consideration of all intrinsic evidence, should the trial court have resorted to extrinsic evidence, such as expert testimony in order to construe claim 1. Moreover, even if the judge permissibly decided to hear all the possible evidence before construing the claim, the expert testimony, which was inconsistent with the specification and file history, should have been accorded no weight.

Vitronics, 90 F.3d at 1584, *citing*, *Southwall Tech., Inc. v. Cardinal IG Co.*, 54 F.3d 1570, 1578 (Fed. Cir. 1995) and *Markman v Westview Instruments, Inc.*, 52 F.3d 967, 983 (Fed. Cir. 1995) (*en banc*), *aff'd*, 517 U.S. 370, 116 S. Ct. 1384, 1393 (1996); *See also*, *Personalized Media*

Communications, LLC v. International Trade Commission, 161 F.3d 696, 706 (Fed. Cir. 1998) ("Extrinsic evidence may not be relied upon during claim construction when the intrinsic evidence unambiguously defines the disputed claim language."), *citing*, *Bell & Howell Document Mgmt. Prods. Co. v. Altek Sys.*, 132 F.3d 701, 706 (Fed. Cir. 1997).

1. DIRECTV's Contention that the Specification of the '720 Patent Describes a System in Which Transceivers Only Utilize a Single Communication Medium is Incorrect

DIRECTV contends that "the specification of the '720 patent describes a system in which transceivers are used such that each interfaces with a single communication medium, and each sends and receives data over the same communication medium." (Motion, at 7:2-4). DIRECTV provides no explicit support from the specification for this contention.[9]

The first place that DIRECTV looks in the specification for the meaning of the transceiver of the *reception system* is Figure2b, which shows the transceivers of the *transmission system*. (Motion, at 7:10-28). Figure 2b shows one embodiment of the transmission system, where the transmission system is capable of transmitting items of information via ISDN, B ISDN, satellite, cable television, local area network (LAN), metropolitan are network (MAN), and/or telephone. The transmission system is also capable of user (customer) access via the library access interface (121) using a two-way connection. (*See* '702 patent, Figure 2b, 12:66 – 13:18; 14:52-60; and 16:34-45; Exhibit 1).

DIRECTV contends that the transceivers of the transmission system in Figure 2b are illustrated with double-headed arrows, because transceivers "cannot send and receive data over different mediums." (Motion, at 7:16-18). No such double-headed arrows, however, are shown with the transceiver of the reception system; thus, the patentees did not communicate that the transceiver of the reception system could only send and receive data over the same medium. (*See* Figure 6 of

[9] There is no explicit support for DIRECTV's proposed construction in the specification of the '702 patent. DIRECTV concedes that its proposed construction is only "implicit" in the specification of the '702 patent: "This *implicit* understanding [that the transceiver operates and interfaces with a single communication medium to send and receive information over that medium] is evidenced in the context of the specification of the '702 patent and woven throughout all the definitions in relevant references." (Motion, at 4:18-20). As shown above, this is not even implicit in the patent specification.

the ‘702 patent; Exhibit 1). The fact that Figure 2b shows double headed arrows associated with the transceivers of the *transmission system* does not mean that the transceiver of the reception system (which does not include a double-headed arrow) must only send and receive data over the same medium. Figure 2b does not serve to limit the claims to the particular configuration shown in Figure 2b. *See, Anchor Wall Systems, Inc. v. Rockwood Retaining Walls, Inc.*, 340 F.3d 1298, 1306-07 (Fed. Cir. 2003) (“Similarly, the mere fact that the patent drawings depict a particular embodiment of the patent does not operate to limit the claims to that specific configuration.”)

Further, nowhere does the specification require that the *transmission system* both send and receive information from *one* transceiver. For instance, the specification specifically contemplates a transmission system which sends information over a satellite communication channel and receives information over a telephone communication channel (or via the customer access to the library access interface 121) – both are depicted in Figure 2b and this embodiment is explicitly described in the specification. (‘702 patent, at 16:34-45; Exhibit 1). The claims are even drafted so as to permit this embodiment, because the claims only require that the transceiver of the reception system be in data communication with the *transmission system*: “a transceiver in data communication with said transmission system.” (*See e.g.*, claim 1 of the ‘702 patent; Exhibit 1). The claims do not specify that the transceiver of the reception system is in data communication with a *transceiver* of the transmission system or even in data communication with only one component of the transmission system for both sending and receiving information. These limitations are not present in the claims, meaning that the transceiver could be in data communication with more than one component of the transmission system – one component to which information is sent and one component from which information is received.

DIRECTV further contends that the specification’s statement that “the reception system 200 confirms reception of the initial data block before receiving the remaining data blocks whenever possible (step 5060)” means that one of ordinary skill in the art would understand that the transceiver of the reception system only transmits this information to the transmission system on the same communication medium as that on which the information is received. (‘702 patent, at 16:23-29; Motion, at 8:12 – 9:2; Lippman Decl., ¶ 28). This statement communicates no such thing. This statement does not describe how this confirmation transmission is made to the transmission system, does not identify the component of the transmission system to which this confirmation transmission is made, and does not identify the communication channel being used. DIRECTV merely *assumes* that the transceiver of the reception system must transmit the confirmation over the same communication medium: "Referring to Figure 6, transceiver 201 is the only device capable of transmitting to the transmission system *on a common medium* a confirmation that the initial data block has been received." (Motion, at 8:22-24: emphasis added). As discussed above, this assumption is incorrect; one of ordinary skill in the art would not conclude from the specification that the transceiver of the reception system interfaces with a single communication medium or that it is only capable of sending and receiving data over that communication medium.

C. The Dictionary Definitions Do Not Support DIRECTV's Construction

In its Markman brief regarding the terms of the '702 patent, Acacia contended that "transceiver" should be construed as "a device that is capable of both transmitting and receiving data." (*See*, Exhibit 3).

Acacia presented four dictionary definitions:

1. "A terminal device that can both transmit and receive signals." (Computer Dictionary and Handbook, Sippl and Sippl, 3rd Ed. 1980 at 594; Exhibit 4);
2. "A terminal device that can both transmit and receive signals." (Dictionary of Information Technology, 2nd Ed. 1986, p. 341; Exhibit 5);
3. "Acronym for transmitter and receiver. A device that can both transmit and receive signals on a communication medium. Many communication devices, including *modems, *codecs, and terminals, are transceivers." (Dictionary of Computing, 3rd Ed. 1990, p. 474; Exhibit 6); and

4. “A device that both transmits and receives data.” (The IEEE Standard Dictionary of Electrical and Electronics Terms, 6th Ed. 1996, p. 1128; Exhibit 7).

None of the dictionary definitions presented by Acacia require that all transceivers are devices which only interface with a single communication medium and are only capable of sending and receiving data over that communication medium.[10]

Defendants contended that the Court should construe “transceiver” as “a combination of a transmitter and receiver in a common housing that uses common circuit components for both transmitting and receiving.” (*See*, Exhibit 8).

Defendants selected two dictionary definitions from the *IEEE Dictionary* and one from *Websters*:

1. “The combination of radio transmitting and receiving equipment in a common housing, usually for portable or mobile use, and employing common circuit components for both transmitting and receiving.” (*IEEE Dictionary*; Exhibit 9);
2. “A combination transmitter and receiver in a single housing, with some components being used by both parts.” (*IEEE Dictionary;* Exhibit 9); and
3. “[*transmitter* + *receiver*]: a radio transmitter-receiver that uses many of the same components for both transmission and receiving.” (*Websters*; Exhibit 10).

---

[10] Acacia also cited the *Inline Connection* case. In *Inline Connection*, the court found that the ordinary meaning of the claim term “transceiver” is “a device capable of both sending and receiving information.” *Id.* The court obtained this ordinary meaning from the Dictionary of Computing (3rd ed. 1991, p. 474), cited by Acacia above. *Inline Connection*, 302 F. Supp. 2d at 325 n 79. The court found that the defendants had failed to overcome the heavy presumption that the term “transceiver” should be given its ordinary meaning and therefore construed “transceiver” as “a device capable of both sending and receiving information.” *Id.* Importantly, for the purposes of this motion, the court in *Inline* did not find, nor was it asked to find, that the ordinary meaning of “transceiver” required that the transceiver interface with a single communication medium or that it is only capable of sending and receiving data over that communication medium.

None of the dictionary definitions presented by defendants require that all transceivers are devices which interface with a single communication medium and are only capable of sending and receiving data over that communication medium. Further, defendants did not contend that the ordinary meaning of "transceiver" required that the transceiver interface with a single communication medium or that it only be capable of sending and receiving data over that communication medium.[11]

1. DIRECTV's Expert Testimony Is Less Reliable than the Dictionaries Themselves

Relying on its expert's testimony, DIRECTV now contends that the fact that a transceiver "interfaces with a single communication medium and sends and receives data over that communication medium is *implicit* in the technical dictionaries that were submitted to the Court during the prior proceedings." (Motion, at 9:11-13; emphasis added). This meaning of transceiver was not understood by any party or by the Court when reading these same dictionary definitions during the initial Markman proceedings.

The Court should not permit DIRECTV to rely on expert testimony to *interpret* dictionary definitions for construing a claim term. Expert testimony is already viewed as "less reliable" than the patent and its prosecution history, because, among other reasons, such testimony is "generated at the time of and for the purpose of litigation and thus can suffer from bias that is not present in intrinsic evidence." *Phillips*, __ F.3d at __, 2005 U.S. App. 13954, at *40. A dictionary, on the other hand, "has the value of being an unbiased source 'accessible to the public in advance of litigation.'" *Id.* at *53-54, *quoting*, *Vitronics*, 90 F.3d at 1585. The Federal Circuit has held that dictionaries are "preferred over opinion testimony, whether by an attorney or artisan in the field of technology to which the patent is directed. Indeed, opinion testimony on claim construction should

[11] Acacia responded by contending that defendants' proposed construction was erroneous because it wrongly included limitations, such as, "common housing" and "common components," that are not present in the specification and are not present in other dictionary definitions of "transceiver." Acacia therefore contended that defendants' proposed construction would be inconsistent with the specification of the patent.

be treated with the utmost caution, for it is no better than opinion testimony on the meaning of statutory terms." *Vitronics*, 90 F.3d at 1585.

As demonstrated above, the parties presented seven dictionary definitions of "transceiver" to the Court. No dictionary defined "transceiver" in the manner proposed by DIRECTV as "a singular device that interfaces with a single communication medium and that is capable of sending and receiving data over that communication medium." (See, Section II.C., above).

DIRECTV's expert addresses four of the seven dictionary definitions. The first definition is from the *IEEE Dictionary*, 4th and 5th Editions. (Lippman Decl., ¶ 30). The definition selected by Dr. Lippman: "The combination of *radio* transmitting and receiving equipment in a common housing, usually for portable or mobile use, and employing common circuit components for both transmitting and receiving" should not considered by the Court, because this definition is inconsistent with the patent specification. *See*, *Renishaw*, 158 F.3d at 1250 ("However, a common meaning, such as one expressed in a relevant dictionary, that flies in the face of the patent disclosure is undeserving of fealty.")[12] This definition is, on its face, *limited* to radio transceivers (e.g. walkie talkies or CB radios). The patent specification is not limited to radio transceivers, but includes many other types of transceivers. (*See*, '702 patent, 4:51-61; 15:30-40; 16:9-22; Figures 1g and 2b).[13]

It is telling that Dr. Lippman has selected this definition from the *IEEE Dictionary*, while ignoring another definition for transceiver from the *IEEE Dictionary*: "A device that both transmits and receives data." (Exhibit 7). Acacia provided this definition to the Court. This definition, of course, does not require that the transceiver interface with a single communication medium or only be capable of sending and receiving data over that communication medium. This definition more closely comports with the patent specification, which, as discussed above, is not limited to transceivers which only transmit and receive over the same communication medium. "[W]here there are several common meanings for a claim term, the patent disclosure serves to point away from the improper meanings and toward the proper meaning." *Renishaw*, 158 F.3d at 1250.

---

[12] *See also, Liebscher v. Boothroyd*, 258 F.2d 948, 951 (C.C.P.A. 1958) ("Indiscriminate reliance on definitions found in dictionaries can often produce absurd results . . . One need not arbitrarily pick and choose from the various accepted definitions of a word to decide which meaning was intended as the word is used in a given claim. The subject matter, the context, etc., will more often than not lead to the correct conclusion.")

[13] The Court did not rely on this definition in reaching its construction of transceiver; the Court did not limit its construction of transceiver to "*radio* transmitting and receiving equipment."

DIRECTV's expert also relies on the definition in the Dictionary of Information Technology and Computer Dictionary Handbook: "a terminal device that can both transmit and receive signals." (Exhibits 4 and 5). Although this definition does not state that the transceiver interfaces with a single communication medium and is capable of sending and receiving data over that communication medium, Dr. Lippman attributes this meaning to the dictionary definition, by interpreting the term "terminal." (Lippman Decl., ¶ 31). Dr. Lippman provides two definitions of "terminal:" (1) "a point in a system where information can be transmitted or received" and (2) "a point at which information can enter or leave a communication network." *Id.* Neither definition of terminal, however, states that the transceiver only has an interface with a single communication medium and is only capable of sending and receiving data over that single communication medium. The definition of "terminal" merely states that the device is a point in the system, *not* that the transceiver interfaces only with a single communication medium.

Lastly, DIRECTV's expert relies on the Dictionary of Computing: "*Acronym for* transmitter and receiver. A device that can both transmit and receive signals on a communication medium. . Many communication devices, including *modems, *codecs, and terminals, are transceivers." (Lippman Decl., ¶ 32). Dr. Lippman states that this definition explicitly recites that the transmitting and receiving occur over a single communication medium. *Id.* This is not the case. The definition does not use the phrase "single communication medium." It merely states that transmitting and receiving occur on a communication medium, i.e., that transmitting occurs on a communication medium and that receiving occurs on a communication medium. Nothing in this definition *requires* that both the transmitting and receiving occur only on the same communication medium. Had the dictionary author intended to limit the definition to transmission and receiving occurring on the same communication medium, the author would have stated: "a device that can both transmit and receive signals over a *single [or "the same"]* communication medium."

The dictionary definitions therefore do not support construing "transceiver" as "a singular device that interfaces with a single communication medium and that is capable of sending and receiving data over that communication medium."

D. The Court's Construction of "Transceiver" Is not Overly Broad

DIRECTV contends that the Court's construction of transceiver is overly broad, because a photocell or an audio speaker would fall under the Court's construction, but no one skilled in the art would call these devices "transceivers." (Motion, at 5:23 – 6:4). This assertion is incorrect, because it ignores the fact that "the person of ordinary skill in the art is deemed to read the claim term not only in the context of the particular claim in which the disputed term appears, but in the context of the entire patent, including the specification." *Phillips*, __ F.3d at __, 2005 U.S. App. LEXIS 13954, at *24. When the patent claims and the specification are considered, it is evident that a photocell or an audio speaker, as those devices are defined by DIRECTV, would not be capable of operating as the transceiver component of the reception system of the claimed communication system.

As discussed above, the claims of the '702 patent relate to a communication system comprised of a transmission system and a reception system. The transceiver is in data communication with the transmission system of the communication system and operates with the other components of the reception system. (*See, e.g.*, Claim 1 of the '702 patent; Exhibit 1). The reception system includes a storage device in data communication with the transceiver, user playback controls in data communication with the storage device, a digital decompressor in data communication with the storage device, and a playback device in data communication with the digital decompressor. *Id.* It is clear from the use of the terms "data communication," "storage device," and "digital decompressor" in the claims of the '702 patent that the reception system handles items of information in the form of digital compressed data in a computer-compatible form. A photocell or an audio speaker, as defined by DIRECTV, could not operate as part of a reception system with these other components.

This is consistent with the Court's construction of "transmission system" and "reception system." The Court construed "transmission system" as:

> An assembly of elements, *hardware and software*, that function together to convert *items of information* for storage in *a computer compatible form* and subsequent transmission to a reception system.

(Markman Order, at 28:11-13; emphasis added).

The Court construed "reception system" as:

> An assembly of elements, *hardware and software*, capable of functioning together to receive *items of information*.

(Markman Order, at 28:21-22; emphasis added).

The Court's construction of the terms "transmission system" and "reception system" would therefore exclude a photocell and an audio speaker as the transceiver of the reception system, because the Court's constructions make clear that the items of information being transmitted by the transmission system and received by the reception system are in "computer compatible form." A photocell and an audio speaker, as described by Dr. Lippman in his declaration, could not be used to transmit or receive items of information in a computer compatible form. (Lippman Decl., ¶ 24). Therefore, no modification to the construction of the term "transceiver" is needed to communicate to persons of ordinary skill in the art that photocells and audio speakers are not transceivers that could be used in the reception system of the claims of the '702 patent.[14]

DIRECTV further contends that the reception system itself could fall within the Court's construction of "transceiver," because it receives a transmission from the transmission system and "outputs or 'transmits' such information to a device such as a television, audio amplifier or audio/video recorder." (Motion, at 6:5-18 and Lippman Decl., ¶ ¶ 24-25). This contention is incorrect, because the claims of the '702 patent make clear that playback device is part of the reception system: ". . . wherein said reception system comprises . . . a playback device in data communication with said digital decompressor." (*See, e.g.*, Claim 1 of the '702 patent; Exhibit 1).

---

[14] If, somehow in the future, someone were to be able to design a communication system which meets all of the elements of the '702 patent claims and is capable of transmitting items of information in a computer compatible form using a photocell or an audio speaker as the transceiver of the reception system, then such a system should be covered by the patent claims (either literally or under the doctrine of equivalents) and should be deemed an infringing system.

Further, according to the specification and the claims, the transceiver is a component of the reception system. DIRECTV cannot seriously contend that a person skilled in the art would believe that a reception system having a transceiver is itself a transceiver.

IV. CONCLUSION

For the foregoing reasons, the Court should reject DIRECTV's request to reconsider the Court's construction of "transceiver" and deny this motion.

DATED: August 25, 2005

HENNIGAN BENNETT & DORMAN LLP

By /s/ Alan P. Block
Roderick G. Dorman
Alan P. Block
Kevin I. Shenkman
Attorney for Plaintiff
ACACIA MEDIA TECHNOLOGIES CORPORATION

496046\v1